

MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE
August 12, 2005

A regular meeting of the Corporations Committee of the Business Law Section of the State Bar of California was held via video conference at the San Francisco and Los Angeles offices of Pillsbury Winthrop Shaw Pittman LLP on August 12, 2005. Attendance was as follows:

MEMBERS PRESENT:

Curt C. Barwick*
Christopher A. Delfino
Bruce R. Deming
James F. Fotenos
Matthew R. Gemello*
Steve Harmon
Steven K. Hazen
Mark T. Hiraide
Nina L. Hong*
Victor Hsu
Brian A. Lebrecht
Brian D. McAllister*
Deborah J. Ruosch
David M. Serepca
Lemoine Skinner III
Jennifer Lynn Sostrin
Steven B. Stokdyk
Suzanne L. Weakley
Brian M. Wong

MEMBERS ABSENT:

Stewart Laughlin McDowell
William R. Sawyers
Teri Shugart
Bertha Cortes Willner
Russell J. Wood

LIAISONS AND GUESTS PRESENT:

R. Bradbury Clark, Non-Profit and Unincorporated Organizations
Rosalind Tyson, Securities and Exchange Commission*
Peter Heinecke

*Via Telephone

The minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda that are not described in these minutes.

I. ADMINISTRATIVE MATTERS

1. Opening Remarks and Announcements: The meeting was called to order by co-chairs Fotenos and McAllister at 9:30 a.m. Mr. McAllister thanked the members of the Committee in attendance and informed them that a quorum was present.

2. Minutes of June and July Meetings: Minutes for the meetings on June 3 and July 8, 2005, were reviewed. Mr. McAllister thanked Ms. Willner for keeping minutes for the July meeting in the absence of the co-secretaries. On motion duly made and seconded, the minutes for the meetings on June 3 and July 8, 2005, were unanimously approved.

II. AGENCY AND LIAISONS' REPORTS

1. SEC: Ms. Tyson reported on news at the SEC, including the swearing in of Roel Campos, Annette Nazareth and Christopher Cox. Ms. Tyson reported that Andrea Harris, co-enforcement director, has announced her departure at the end of the September, and that the SEC is looking for a new associate in enforcement. Ms. Tyson reported that the market regulation chief counsel's office is working on a finders' rule. Ms. Tyson reported on various ABA task force proposals under review and recent publications.

2. Department of Corporations: Mr. Fotenos reported that Mr. Le Bas has informed him that DOC has forwarded a Corporate Disclosure Act recommendation to the governor's office, but that it is not a public recommendation. Mr. Fotenos further reported that DOC may introduce a bill next year. Mr. Fotenos further reported that there has been no progress with regard to the Uniform Securities Act.

3. Cyberspace Law Committee: Mr. Serepca reported that the Cyberspace Law Committee is presenting its annual Hot Issues Panel at the upcoming Annual Meeting in San Diego.

4. Financial Institutions Committee: Ms. Sostrin reported that she attended two meetings of the Financial Institutions Committee and provided the members present with a summary of pending legislation of interest to bankers. Ms. Sostrin reported on presentations made at the meetings she attended, including with regard to significant developments for banks. At the suggestion of Mr. Fotenos, the members present discussed whether the committee should get involved with the Financial Institutions Committee in proposing legislation to authorize pre-dispute jury trial waivers in light of the recent Grafton decision, such as an amendment to CCP Section 631. The members present discussed the suggestion.

5. Nonprofit and Unincorporated Organizations Committee: Mr. Clark reported that the Nonprofit and Unincorporated Organizations Committee is working to assure that a Law Revision Commission proposal on unincorporated associations is passed. Mr. Clark reported that the Non-Profit and Unincorporated Organizations Committee is working the attorney general's office in an attempt to refine and enact Nonprofit Integrity Act regulations. Mr. Clark invited the members to attend the upcoming meeting in San Diego.

6. Partnerships and LLCs Committee: Mr. Deming reported that nothing new is happening with the Partnerships and LLCs Committee, and that there is no meeting of that committee in August.

7. UCC Committee: Ms. Hong reported that the UCC Committee reviewed a survey on filing and reporting systems for foreign debtors in the 25 largest U.S. trading partner countries. Ms. Hong committed to circulate a copy of the survey to the committee members or to post it to the committee's extranet following the meeting.

8. Executive Committee: Mr. Fotenos reported that he has inquired with Mr. Caplan as to whether the Handbook for Incorporating a California Business requires Executive Committee approval.

III. SUBCOMMITTEE REPORTS

1. Legislation: Mr. Stokdyk reported that it has been an extremely quiet summer in Sacramento for legislation related to corporate law. Mr. Stokdyk reported that there have been no new changes to SB 119 (unanimous written consent; interested directors), and that AB 241 (mergers; certificate of satisfaction) is still on the Senate consent calendar with no new changes.

Ms. Ruosch reported that there were stylistic comments to pending ALPs, which were received, processed, resubmitted and approved.

Mr. Stokdyk proposed that the legislative subcommittee prepare an affirmative proposal in response to the Grafton decision. The members present discussed the proposal, including technical ways to amend the Code of Civil Procedure to authorize pre-dispute jury trial waivers. Mr. Skinner voiced opposition from a consumer perspective. The members present discussed the opposition, including a proposal that there be a threshold dispute amount in order to forego a jury trial, as well as whether the Grafton decision impedes doing business in California and whether the Supreme Court has invited a legislative response. The members present generally expressed a consensus to proceed with drafting a proposed amendment to the CCP for discussion at the next general meeting, as well as to inform the Financial Institutions Committee in order to coordinate and fully debate the matter in September. Messrs. Stokdyk and Delfino volunteered to work on the proposal.

2. Communications/Website: Mr. Hsu reported that Michael Mullen is posting updates to the website and that an eblast is in process. Mr. Hsu reported that a Vantage Point case note has been drafted and circulated to officers. The members present discussed the appropriate tone for the case note. Mr. Fotenos requested that the case note be circulated to members for electronic polling prior to distribution. Mr. Hsu then reported that a working group had been formed for website improvement, as well as potential changes to the practitioners' corner and possible SOS, DOC and AG partitions.

3. Education/Publications: Ms. Weakley reported on two programs being presented at the upcoming State Bar meeting: How to Organize a California Corporation, being presented by Ms. Shugart and Mr. Skinner; and Recent Developments in California Corporate Law, being presented by Messrs. Stokdyk, Caplan and Serepca. Mr. Serepca gave thanks to Ms. Weakley for her BLN article on which a portion of the program materials for the Recent Developments program are based and he invited comments and additions from the members present before the annual meeting. Ms. Weakley reported that Keith Bishop is writing an article for the November issue of California Business Law Practitioner, concerning electronic transmission of communications with a California corporation. Ms. Weakley proposed a roundtable on articles and projects for the upcoming year following the annual meeting.

IV. 2004-2005 AGENDA: STATUS

1. NVCA Model Forms – CA Commentary and Annotations: Mr. Fotenos thanked the working group for their efforts and introduced Mr. Skinner. Mr. Skinner described the project to the members present and introduced each member of the working group who reported on edits made to the various forms, and who each received comments from the members present, as follows:

- Term Sheet – Deming
- Articles of Incorporation – Skinner & Deming
- Voting Rights Agreement – Serepca
- Right of First Refusal and Co Sale Agreement – Skinner
- Indemnification Agreement – Harmon
- Management Rights Agreement – Skinner
- Opinion – Skinner
- Stock Purchase Agreement – Hiraide

The members present discussed whether to include the opinion letter, considering the role of the Opinions Committee, the recent Opinion Report, and the reported de-publishing of the NVCA model legal opinion form.

2. Opinion Report: Mr. Fotenos reported that the Opinion Report has been posted to the members-only portion of the Section's website, and that publication is anticipated to occur very soon.

3. Handbook for Incorporating a Business in California: Mr. Fotenos reported on the status of the publication, including that the general counsel's office has retained outside counsel for an opinion regarding certain copyright issues. Mr. Fotenos and other working group members proposed adding text acknowledging certain rights. Upon motion duly made and seconded, the following text was unanimously approved:

"The State Bar of California gratefully acknowledges the contribution of Richard D. Harroch, Esq. to the Corporation Committee's September 1992 "Guide to Organizing a California Corporation" (the "1992 Guide"). All copyrights to the 1992 Guide and its updates and derivative works are held solely by Richard D. Harroch, Esq."

4. Close Corporation Model Act Adoption: Mr. Serepca reported that a meeting of the working group will be held today at 1:15 p.m.

V. OTHER BUSINESS

1. State Bar Annual Meeting Reminder: Mr. Fotenos reminded the members present that the State Bar Annual Meeting will be next month from September 8-11.

2. Report on ABA Task Force: Mr. Hazen reported on his recent trip to Chicago and Philadelphia, including approval by the ABA Task Force on Attorney-Client Privilege of Recommendation 111 for the Adoption of Resolutions, a copy of which was provided to the members present. Mr. Hazen reported on subcommittees forming and asked for members interested in serving. Mr. Fotenos invited anyone interested to contact him or to contact Mr. McAllister, Stokdyk or Gamello.

3. Northern California Super Lawyer Honor: Mr. McAllister informed the members present that Mr. Fotenos has been named a Northern California Super-Lawyer by San Francisco Magazine. The members present congratulated Mr. Fotenos.

Mr. McAllister called for any other business. There being no other business before the committee, the meeting was adjourned at approximately 12:30 p.m.



David M. Serepca, Co-Secretary